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PAUL F. DONOVAN			NORDMEYER, PATRICIA L	
ILLINOIS TOOL WORKS INC.			ART UNIT	PAPER NUMBER
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/619,956

Filing Date: July 15, 2003

Appellant(s): MEIER ET AL.

MAILED
MAY 04 2007
GROUP 1700

Mitchell J. Weinstein
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 12, 2007 appealing from the Office action mailed February 28, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,696,969	De Van et al.	10-1972
5,203,470	Brown	4-1993
4,851,272	Knox, III et al.	7-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 18, 19 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Van et al. (USPN 3,696,969) in view of Brown (USPN 5,203,470).

De Van et al. disclose a flange having first and second sides (Column 4, lines 1 – 3; Figure 3, #52) with a spout extending upwardly from the first side of the flange (Figure 3, #24). As seen from Figure 3, the flange and spout are integral with one another. A sealing media molded over and onto the first side of the flange, which is disposed between the first side of the flange and the sealing media (Column 4, lines 4 – 5). The material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 4, lines 35 – 40). However, De Van et al. fails to

disclose sealing media being heat activated, the first material is high density polyethylene and a thread formed on an outer surface of the spout.

Brown teaches flange and spout are formed from a single first material, high density polyethylene (Column 3, lines 40 – 41) wherein the spout has thread formed on an outer surface of the spout (Column 2, lines 50 – 52) and the spout is sealed to the flexible material through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 3, lines 40 – 52) for the purpose of forming a bag in a box type container wherein the spout is heat sealed to the bag to form a liquid impervious connection (Column 3, lines 33 – 36).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the flange and spout formed of a single material with a thread on the outer surface in De Van et al. in order form forming a bag in a box type container wherein the spout is heat sealed to the bag to form a liquid impervious connection as taught by Brown.

Claims 3, 5 – 9, 20 – 23 and 25 – 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Van et al. (USPN 3,696,969) in view of Brown (USPN 5,203,470) as applied to claims 1, 2, 4, 18, 19 and 24 above, and further in view of Knox, III et al.

De Van et al., as modified with Brown, discloses a flexible package with an over-molded fitment. However, the modified De Van et al. fail to disclose the first material is an ethylene vinyl alcohol copolymer and wherein the second materials is formed from a composition including an ethylene-octene copolymer, wherein the second material further includes a maleated polyolefin, and the ethylene-octene copolymer is present in a concentration of about 75 percent by weight of the second material and the maleated polyolefin is present in a concentration of about 25 percent by weight of the second material.

Knox, III et al. teaches both a maleated polyolefin, a polyolefin mixed with an acid, and an ethylene octene copolymer, linear low density polyethylene, in a second material covering the flange of the spout (Column 2, lines 24 – 26) wherein the maleated polyolefin has a weight percent of about 18 (Column 2, lines 26 – 29) for the purpose of forming a material that is strong enough to withstand jostling without leaking the product (Column 1, lines 19 – 21).

It would have been obvious to one of ordinary skill in the art at the time the applicant's invention was made to have provided the maleated polyolefin along with the ethylene octene copolymer in the modified De Van et al. in order to form a material that is strong enough to withstand jostling without leaking the product as taught by Know, III et al.

Brown et al. discloses the claimed invention except for the first material being an ethylene vinyl alcohol. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use ethylene vinyl alcohol as the first material, since it has been held

to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

With regard to claims 3 – 6, 23 and 25 – 27, since the modified De Van et al. and Knox, III et al. teach the first and second materials are a high density polyethylene and a ethylene octene, it is obvious to one of ordinary skill in the art that the first material would have a melting point temperature about 110 °F greater than a melting point temperature of the second material and the first material has a melting point temperature of about 265 °F and the second material has a melting point temperature of about 155 °F while have a density of about 0.875 g/cc.

(10) Response to Argument

The Examiner has improperly rejected claims 1, 2, 4, 18, 19 and 24 in that the disclosure of De Van et al., the primary reference, has been improperly interpreted.

Appellants argue that the Examiner has failed to show each and every limitation of claimed invention in the cited are, and accordingly, has failed to make a *prima facie* case of obviousness. Appellants further argue that the Examiner has failed to show the claim recitation of “a molded sealing media molded over and onto the first side of the flange” with the prior art of De Van et al. in view of Brown.

In response to Appellant’s arguments that the Examiner has failed to show each and every limitation of claimed invention in the cited are, and accordingly, has failed to make a

prima facie case of obviousness, the Examiner has disclosed every limitation of the claimed invention, thereby presents a *prima facie* case of obviousness. De Van et al. disclose a flange having first and second sides (Column 4, lines 1 – 3; Figure 3, #52) with a spout extending upwardly from the first side of the flange (Figure 3, #24). As seen from Figure 3, the flange and spout are integral with one another. A sealing media molded over and onto the first side of the flange, which is disposed between the first side of the flange and the sealing media (Column 4, lines 4 – 5). The material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 4, lines 35 – 40). Molded is defined as to “give shape to or to form in a mold”. The adhesive is given a shape when it is placed on the surface of the flange from the container that the adhesive is extruded.

In response to Appellant’s arguments that the Examiner has failed to show the claim recitation of “a molded sealing media molded over and onto the first side of the flange” with the prior art of De Van et al. in view of Brown, De Van et al. clearly states a sealing media molded over and onto the first side of the flange, which is disposed between the first side of the flange and the sealing media (Column 4, lines 4 – 5). Molded is defined as to “give shape to or to form in a mold”. The adhesive is given a shape when it is placed on the surface of the flange from the container that the adhesive is extruded.

The Examiner has improperly rejected claims 3, 5 – 9, 20 – 23 and 25 – 27 in that the disclosure of De Van et al., the primary reference, has been improperly interpreted.

Appellants argue that the Examiner has failed to show each and every limitation of claimed invention in the cited are, and accordingly, has failed to make a *prima facie* case of obviousness. Appellants further argue that the Examiner has failed to show the claim recitation of “a molded sealing media molded over and onto the first side of the flange” with the prior art of De Van et al. in view of Brown and Knox, III et al.

In response to Appellant’s arguments that the Examiner has failed to show each and every limitation of claimed invention in the cited are, and accordingly, has failed to make a *prima facie* case of obviousness, the Examiner has disclosed every limitation of the claimed invention, thereby presents a *prima facie* case of obviousness. De Van et al. disclose a flange having first and second sides (Column 4, lines 1 – 3; Figure 3, #52) with a spout extending upwardly from the first side of the flange (Figure 3, #24). As seen from Figure 3, the flange and spout are integral with one another. A sealing media molded over and onto the first side of the flange, which is disposed between the first side of the flange and the sealing media (Column 4, lines 4 – 5). The material that is molded over through heat sealing, or covering the flange of the spout, is formed from a second material different from the first material with a lower density (Column 4, lines 35 – 40). Molded is defined as to “give shape to or to form in a mold”. The adhesive is given a shape when it is placed on the surface of the flange from the container that the adhesive is extruded.

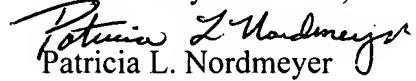
In response to Appellant's arguments that the Examiner has failed to show the claim recitation of "a molded sealing media molded over and onto the first side of the flange" with the prior art of De Van et al. in view of Brown and Knox, III et al., De Van et al. clearly states a sealing media molded over and onto the first side of the flange, which is disposed between the first side of the flange and the sealing media (Column 4, lines 4 – 5). Molded is defined as to "give shape to or to form in a mold". The adhesive is given a shape when it is placed on the surface of the flange from the container that the adhesive is extruded.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Patricia L. Nordmeyer

Conferees:

Patrick Ryan 


Nasser Ahmad